

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF ARKANSAS  
TEXARKANA DIVISION

JERRY MARTIN

PLAINTIFF

VS.

CASE NO. 4:06-CV-4059

PHILLIP RUSSELL, Individually and  
in his Official capacity as City of Hope  
Police Department Officer, KIM TOMLIN,  
Individually and in her official Capacity as  
City of Hope Police Department Officer,  
TATE BOOKER, Individually and in his  
official Capacity as City of Hope Police  
Department Officer, SANDRA SUNBURG,  
Individually and in her official Capacity as  
City of Hope Police Department Officer,  
PETE ANZLONE, Individually and in his  
official Capacity as City of Hope Police  
Department Officer, and The CITY OF HOPE,  
ARKANSAS

DEFENDANTS

**AMENDED ORDER**

Plaintiff Jerry Martin brings this lawsuit against Defendants Phillip Russell, Kim Tomlin, Tate Booker, Sandra Sunburg, Pete Anzalone and the City of Hope, Arkansas (collectively, "Defendants") pursuant to 42 U.S.C. § 1983, alleging that Defendants violated his constitutional rights under color of law. Before the Court is Defendants' Motion for Summary Judgment. (Doc. 17). Plaintiff Jerry Martin has responded in opposition. (Doc. 24). Defendants filed a reply to Plaintiff's response. (Doc. 31). The matter is ripe for consideration.

For reasons stated in the Court's Memorandum Opinion of July 14, 2008, Defendants' Motion for Summary Judgment should be and hereby is **GRANTED IN PART** and **DENIED IN PART**. Defendants' motion is **DENIED** to the extent that it seeks dismissal of Plaintiff's claims of unlawful arrest for alleged violations of Orders of Protection and failure to investigate related

thereto. Defendants' motion is **GRANTED** to the extent that it seeks dismissal of all other claims advanced by Plaintiff. Aside from Plaintiff's claims related to his alleged unlawful arrests and to Defendants' failure to investigate, Plaintiff's claims are hereby **DISMISSED WITH PREJUDICE**.

**IT IS FURTHER ORDERED** that Plaintiff's official capacity claims and allegations against Defendants Phillip Russell, Kim Tomlin, Tate Booker, Sandra Sunburg and Pete Anzalone, and all claims brought by Plaintiff against the City of Hope, Arkansas are hereby **DISMISSED WITH PREJUDICE**.

Finally, the Court is satisfied that Defendants are not entitled to qualified immunity. Plaintiff's claims related to his unlawful arrest for alleged violations of Orders of Protection and to Defendants' failure to investigate proceed to trial by jury.

**IT IS SO ORDERED**, this 16th day of July, 2008.

/s/Harry F. Barnes  
Hon. Harry F. Barnes  
United States District Judge